

RECEIVED  
MAR - 4 2024  
PRO SE OFFICE

Index No. \_\_\_\_\_

## JURISDICTION

1

II. The parties to this Complaint;

A. The Plaintiff(s)

Name: ERICK ROBERTSON, DIN# 17A1841  
Sullivan Correctional Facility  
325 Riverside drive/P.O.Box-116  
Fallsburg, New York 12733-0116

-----  
B. The Defendant(s)

Defendent No.1

SULLIVAN CORRECTIONAL FACILITY(Government agency)  
325 riverside drive/P.O.Box-116  
Fallsburg, New York 12733-0116  
  
(X)Individual and Official Capacity

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Defendent No.2

WILLIAM KEYSER, SUPERINTENDENT(Superintendent)  
325 Riverside drive/P.O.Box-116  
Fallsburg, New York 12733-0116

-----  
Defendent No.3

A. Justiniano, DSP(Deputy Superintendent of Programs)  
325 Riverside drive/P.O.Box-116  
Fallsburg, New York 12733-0116  
  
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Defendent No.4

E. SIMMONS, (SORC)(Supervising Offender Rehabilitation Coordinador)  
325 Riverside drive/P.O.box-116  
Fallsburg, New York 12733-0116

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Defendent No.5

J. SIRCABLE, (ORC) ( Offender rehabilitations Coordinator)  
325 Riverside drive/P.O.Box-116  
Fallsburg, New York 12733-0116

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Defendent No.6

A. ESCOBAR, (SORC)(Supervising Offender Rehabilitation Coordinator)  
325 Riverside drive/P.O.box-116  
Fallsburg, New York 12733-0116

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### III. Basis for Jurisdiction

A. Plaintiff brings suit against:

- ( ) Federal Officials (a Bivens claim)
- (X) State and Local Officials(a § 1983 claim)

B. Plaintiff; is suing under section 1983, and the Americans with Disabilities Act(ADA), Title II Regulations(2010), violated by state and local officials.

C. wherein; said defendants have subjected the plaintiff to discrimination by a public entity.

D. Plaintiff; avers that said Defendants, acting under the color of the New York State Department of corrections: Sullivan Correctional Facility, subjected the plaintiff to Discrimination, in violation of the American with Disabilities Act (ADA), Title II regulations(2010) and Perjury in-violation of the 14, amendment of the U.S. Constitution Due process of law and the Equal protections of the laws, Thus; these Defendants at all times were acting under the color of law.

E. Plaintiff; is a prisoner at Sullivan Correctional Facility, Convicted and sentenced state prisoner.

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#### IV. Statement of Claim

1. Plaintiff; duly sworn declare's Sullivan Correctional Facility; is a public entity: under the Americans with Disabilities Act (ADA), Title II regulation (2010).

2. Plaintiff; Herein by definition; is legally disable in many respects namely, Plaintiff; is **Hearing Impaired (HL-20)** Hard of hearing, and as requested afforded Reasonable Accommodations to use the TeleType-("TTY") MACHINE, on December 14, 2017.((See: attached **EXHIBIT (A)** REQUEST FOR REASONABLE ACCOMMODATIONS FORM 2612B)), with MEDICAL VERIFICATION [X] HARD OF HEARING (HL-20), signed by J. Wolf, MD 0117., on 12/7/2017., and with the Same **EXHIBIT (A)** in section for REASONABLE ACCOMMODATIONS DETERMINATION: [X] approved as requested, with an Explanation of Modification or Denial: Being; **Documentation from previous facility, approving TTY use,** signed by the Acting Deputy superintendent of programs on December 14, 2017., granting/ affording plaintiff; the requested and legally entitled accommodations of a hearing impaired incarcerated individual.

3. However; Plaintiff, contends on **March 1, 2019:** He/Plaintiff, was the subject of Discrimination, by the DisContinued access/use of previously **Approved Reasonable Accommodations (" USE OF THE TELETYPE-TTY ")** communications system. In-Violation of the (ADA) **Americans with Disabilities Act, Title II Regulations(2010),** [AG-Order No. 3180-2010,75FR 56184, Sept. 15, 2010], and (DOCCS) Directive 2612, Inmates with Sensorial Disabilities section VII. EQUIPMENT AND SERVICES FOR THE DEAF AND HARD OF HEARING:

4. **Wherein;** a DisGriminatory manner, on March 1, 2019., Ms. Simmons, (SORC) discontinued/removed Plaintiff's use of "TTY " accommodations, SEE: **EXHIBIT (B)** To: Robertson E. 17A1841, From: (SORC) Ms. Simmons, Date: 3/1/19; RE: TTY use; Which states, ' After careful review of your audiology needs and current hearing loss, It has been determined that you are not eligible for the use of a TTY as your hearing loss is not significant enough to warrant such an accommodation '....etc...

5. **IRRESPECTIVE;** Contrary to the actual audiology reports written by Mr. J. SERHAN; see: **EXHIBIT (C) & (D)** HEALTH SERVICES SYSTEM REQUEST AND REPORT OF CONSULTATION, used to Grant/afford Plaintiff said TTY-Reasonable Accommodations SEE: **EXHIBIT (C)** and the **EXHIBIT (D)**, Which clearly states to the contrary in section A: bottom half; ' No significant Auditory change per 2017 Audio.

6. **CONTRARY;** TO (SORC) Ms. SIMMONS, assertions within **EXHIBIT (B)**, used to discontinue Plaintiffs (" TTY - TELEType ") accommodations., Plaintiff; Objected, filing letters and Grievances, regarding the denial of the use and removal of **TTY-accommodations;** Wherein the respective Defendants knowing Ms. SIMMONS, assertions were/are an intrinsic Fraud and Discrimination against a disable individual, herein commence fabricating reason's for their malfeasance, Defending their conspiracy to discriminate by adopting, Ms. Simmons; Deceptive, false and misleading Fraud/trickery about Plaintiff not being eligible for "TTY" use! by denying/excluding plaintiff from the Benefits of, the services, programs, or activities of a public entity., and - Fraudulently Creating false, perjurious, perjured submissions/Documents and submitted said documents to the Court of Claims, Inorder to **conceal, cover-up and dismiss** the Plaintiff's cause of Action! Depriving Plaintiff of any chance of Remediying the erroneous act's asserted herein! violation of [AG Order No. 3180-2010, 75 56183, Sept 15, 2010], and 42 U.S.C. §§§ 1983, 1985 and 1986, **The Americans with Disabilities Act (ADA) Title II Regulations (2010).**

7. **Thus; Herein,** **EXHIBIT (E)** are the Fraudulent submissions Created by said defendants, Commencing with **EXHIBIT (E-1)**- an AFFIDAVIT from J. SIRCABLE; being duly sworn, deposes and says: in paragraph 1. I am an Offender Rehabilitation Coordinator employed with the New York State Department of Corrections and Community supervision ["DOCCS"] at the Sullivan Correctional Facility [Facility]. I make this affidavit in

opposition to the Claimant's motion for summary judgment. (In paragraph 2. she states)  
 2. part of my job duties is to assist inmates who apply for reasonable accommodations at the facility and remove accommodations when they are not medically necessary. 'and (in paragraph 3. she states')

3. I reviewed the audiology report dated February 28, 2019, by Audiologist **John Serhan**, regarding **Erick Robertson**, Claimant. Audiologist John Serhan indicated a TTY or TDD device is not medically necessary for Claimant. (and continued on)

4. The report shows in the row "O:...(-)TTY (-)TDD", which indicates negative for TTY and Negative for TDD., ( and She continues)

5. The report also indicates hearing loss in Claimant's left ear to be 40 dB measured by the pure Tone Audiometry (PTA) and hearing loss in Claimant's right ear to be 62.

6. On March 1, 2019, Claimant's reasonable accommodations for use of the TTY was removed due to the audiology report indicating negative for TTY and negative for TDD.

**WHEREIN;** Defendant J. SIRCABLE; in the remaining paragraph's, duly sworn to: affirms the respective defendants were in agreement with said Conspiracy to intentionally discriminate against Plaintiff, in denying/removing his TTY accommodations, through the use of the Fraudulent and deceiving misrepresentations of material facts that are not true, false and contrary to the herein **EXHIBITED**, **EXHIBIT's (C)&(D)** The reports by **John Serhan**, pursuant to Plaintiffs hearing loss and need for TTY-accommodations. **Thus;** Defendant J. SIRCABLE, Intentionally Discriminated against The Plaintiff in removing his TTY-accommodations and in doing so committed **Perjury** and **Fraud!** as the above was submitted and filed in the Court of Claims! used to deny/dismiss Plaintiffs cause of action, which is the prejudice necessary to maintain action., and furthermore! **EXHIBIT (E)** contain's **EXHIBIT (E-2)** wherein Defendant **A. ESCOBAR;** (SORC), submit's his Fraudulent letter asserting the same falsehood/Fraud about **John Serhan**, report. as the Defendant (DSP) **A. Justiniano;** following suit in this conspiracy to deny plaintiff his civil rights and rights protected under the (ADA), due process of law and Equal protections of the laws, under the 14th, amendment of the U.S. Constitution.

**HENCE;** herein, after The defendants known prohibited Discrimination, and exercising Fraud and **perjury!** to deny and remove Plaintiffs TTY-reasonable accommodations On or about January 3, 2020., plaintiffs reasonable accommodations was reinstated., per. **EXHIBIT (F)**, of which should have never been taken/remove in the first instance.

## V. Injuries

8. **PLAINTIFF**; a Qualified individual with a disability; suffered from March 1, 2019, when his accommodation were remove to January 3, 2020, without being afforded use of the **TTY-accommodations**, having to write grievances, appeals thereof and petition the Court of Claims, pay filing fee's, copy and postage fee's as well as the pain of my experiencing Tinnitus as I had to strain to hear the other party and at times could not communicate at all....

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## VI. Relief sought

9. Wherefore; Plaintiff, herein is filing this suit for the **Fabrications Fraud and Perjury** committed herein to deny/remove Plaintiffs, Reasonable accommodations violating **due process of law and Equal protections of the laws**, under the 14th Amendment of the U.S. CONSTITUTION and Federal law., seeking monetary damages in the amount of one hundred and fifty thousand dollars,\$150,000

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## VII. Exhaustion of Administrative Remedies

10. Pursuant to The Prison Litigation Reform Act ("PLRA").42 U.S.C.§ 1997 e(a), Plaintiff has Exhausted all remedies prior to the filing of this suit.

A. This claim arose during plaintiff incarceration at Sullivan C.F.

B. Sullivan does have a grievance procedure.

C. Plaintiff did file many Grievances concerning this matter.

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## VIII. Previous Lawsuits

11. **Plaintiff**; has Not had a case or action dismissed based on the "three strikes rule" !

A. **Plaintiff**; has filed another/other lawsuit in state court of claims dealing with the same facts involved in this action.

B. **The State of New York Court of Claims**, was the court in which Plaintiff, filed two claims, in Binghamton Regional offices, both claims No. 135173 & 134886:

C. Judge Honorable Javier E. Vargas; of the court of claims; issued an 'ORDER DIRECTING JUDGMENT BE ENTERED DISMISSING CLAIM No.s above be dismissed, On September 28, 2023., in claim No. 135173/ and September 29, 2023., in claim No. 134886, See attached Court Order's under EXHIBIT (F) in attached memorandum of Exhibits.

The Above is No-longer pending, due to the Fraud, Perjury and misrepresentations written and submitted therein and herein as EXHIBITS.

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#### IX. Certification and closing

Under Federal Rules of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for any improper purpose, such as to harass, cause any unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law by a nonfrivolous argument for extending, modifying or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the Complaint otherwise complies with the requirements of Rule 11.

#### A. Pro-se Party

I agree to provide the clerk's Office with any changes to my address where case related papers may be served. I understand that my failure to keep a current address on file with the clerk's Office may result in the dismissal of my case.

Date of signing: 2-27-24

Signature of Plaintiff: X Erick Robertson

Printed Name of Plaintiff: Erick Robertson

Prison Identification No: 17A1841

Prison address: Sullivan C.F. 325 Riverside drive/P.O.BOX-116

Fallsburg, New York 12733-0116

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ERICK ROBERTSON, Plaintiff,

-v-

INDEX NO. \_\_\_\_\_

SULLIVAN CORRECTIONAL FACILITY, ..al etc...

-----X

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MEMORANDUM OF EXHIBITS

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# EXHIBIT A

EXHIBIT (A)

ATTACHMENT B

NO 2612, Inmates With Sensorial Disabilities

DATE 10/26/2010 PAGE 11 of 16

PHOTOCOPY LOCALLY AS NEEDED

## REQUEST FOR REASONABLE ACCOMMODATIONS

Date 12/6/17

Inmate's Name Robertson E Din # 17A1841 Facility Sullivan

- ☐ I do not request reasonable accommodations
- ☐ I request reasonable accommodations as indicated below for the following program or service:

Check to indicate request:

HEARING IMPAIRMENT		VISUAL IMPAIRMENT	
Requested	Approved	Requested	Approved
<input type="checkbox"/> Qualified Sign Lang Interpreter	<input type="checkbox"/>	<input type="checkbox"/> Large Print	<input type="checkbox"/>
<input checked="" type="checkbox"/> TTD/TTY	<input checked="" type="checkbox"/>	<input type="checkbox"/> Orientation & Mobility Instruct.	<input type="checkbox"/>
<input type="checkbox"/> Telephone Amplifier	<input type="checkbox"/>	<input type="checkbox"/> Mobility Assistants, Signbrd Guide	<input type="checkbox"/>
<input type="checkbox"/> Closed Caption Television	<input type="checkbox"/>	<input type="checkbox"/> Guidance Cana	<input type="checkbox"/>
<input type="checkbox"/> Sound Amplification Systems	<input type="checkbox"/>	<input type="checkbox"/> Support Cana	<input type="checkbox"/>
<input type="checkbox"/> Hearing Aids/Batteries	<input type="checkbox"/>	<input type="checkbox"/> Braille Print	<input type="checkbox"/>
<input type="checkbox"/> Notification Systems	<input type="checkbox"/>	<input type="checkbox"/> Braille Equipment	<input type="checkbox"/>
<input type="checkbox"/> Visual Smoke Detector	<input type="checkbox"/>	<input type="checkbox"/> Magnifiers	<input type="checkbox"/>
<input type="checkbox"/> Preferred Seating	<input type="checkbox"/>	<input type="checkbox"/> Tape Player/Cassettes	<input type="checkbox"/>
<input type="checkbox"/> Shake Awake Alarm	<input type="checkbox"/>	<input type="checkbox"/> Lamp	<input type="checkbox"/>
<input type="checkbox"/> Pocket Talker	<input type="checkbox"/>	<input type="checkbox"/> Visor/Sunglasses for indoor use	<input type="checkbox"/>
		<input type="checkbox"/> Other	<input type="checkbox"/>

E. Robertson (Inmate's Signature) J. Sirciole (Staff Name/Title) [Signature] (Staff Signature)

## MEDICAL VERIFICATION (Use established definitions)

- ☐ Severe Visual Impairment (V2P0) ☐ Blind (B240) ☐ Non Significant Hearing Loss (H130)
- ☒ Hard of Hearing (H120) ☐ Deaf (H110)

No Medical Verification on File Follow-up Appointment Necessary? ☐ Yes ☐ No

J. Wolf, MD (Medical Staff - Name/Title) 01/7 [Signature] (Med. Staff Signature) 12-2-17 (Date)

Return this form to the Staff member whose name appears next to the inmate's signature above

## REASONABLE ACCOMMODATION DETERMINATION

The reasonable accommodations requested above have been:

- ☒ approved as requested
- ☐ modified - accommodations which have been approved are marked above ☐
- ☐ denied
- ☐ pending medical verification

EXPLANATION of modification or denial:

approving TTY use.

Documentation from previous facility

[Signature] (DSF or designee) [Signature] (Inmate's Signature) [Date] (Date)

This section is to be completed by the inmate.

☒ I agree ☐ I disagree with this determination

☐ I want to meet with the Superintendent or his/her designee during this review.

☐ I want to have an interpreter with me or other assistive device during this meeting.

(Inmate's Signature)

(Date)

Distribution

Original  
Copies

Guidance File

Inmate Medical, CMH, Parole, ADA Coordinator (Central Office)

Inmate Sign

# EXHIBIT B

EXHIBIT (B)



## Corrections and Community Supervision

ANDREW M. CUOMO  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

2/27/19

To: Robertson, E. 17A1841

From: SORC Simmons

A handwritten signature in cursive script, appearing to read "Simmons", written over the printed name "SORC Simmons".

Date: 3/1/19

Re: TTY use

---

After careful review of your audiology needs and current hearing loss, it has been determined that you are not eligible for the use of a TTY as your hearing loss is not significant enough to warrant such an accommodation. Using a portable telephone amplifier is an adequate and reasonable accommodation based on your hearing needs. If you have not done so already, you will need to meet with ORC Sircable to initiate the voice recognition program to enable you to use the regular telephones available.

cc: DSP Justiniano  
DSS Sipple  
Area Sergeant  
ORC Sircable

# EXHIBIT C

5/23/17 13:38:53  
HSC4781NYS DEPARTMENT OF CORRECTIONAL SERVICES  
HEALTH SERVICES SYSTEM  
REQUEST AND REPORT OF CONSULTATION

PAGE

1

5/2

3A5

NAME: ROBERTSON, ERICK

DIN: 17A1841 DOB: 08/29/1966

CURRENT FAC: DWNSTATE REC

REFERRING FAC : DWNSTATE REC

REFERRAL NUMBER: 17204530.01M

REFERRAL DATE : 05/15/17 03:12P TELEMED: N&lt;N&gt;

REFERRAL TYPE : INITIAL

TYPE OF SERVICE: AUDIOLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: SOON

INTERPRETER:

MEDICAL HOLD: NO

TYPE:

REASON CODE:

EXP. DATE:

TRANSPORTATION : N

WHEELCHAIR N

NURSE N

AMBULANCE N

LITTER N

HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: MARIO MALVAROSA, MD

APPOINTMENT: 05/24/17 09:00A

REVIEWED BY: MARIO MALVAROSA, MD

POS: DOWNSTATE CF

PROV: SERHAN, JOHN-AUD

## REASON FOR CONSULTATION:

USER: 05/15/17 03:12P C240MJM

( BILAT HYPOACUSIA; PE NL: HAS HEARING AIDS BUT PT STATES THAT HE BELIEVES )

( THAT THERE'S A MECHANICAL/ELECTRICAL PROBLEM WITH THEM; NEW BATTERIES HAS )

( NOT HELPED; PLZ SCHED FOR PLACEMENT/CLASSIFICATION PURPOSES.

( Ax-Tianna Bear - GSB age 10 Hammer - Jackson )

(usual scores)

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

## CONSULTANT REPORT:

LIR Siemens In-lus sp d.ve - LUGLY (Bram)  
shad lmm

S:

(Audio) @ moderate, Profound HL  
@ m.w. Severe SNHL

o: phony con r HL, local etc left HL

A:

# # HL 20 - Hearing loss / Hard of Hearing

PTA @ = 67  
@ 43@ unaided Noh  
@ 77-7-100  
@ 5.9m whp@ amp  
@ act set  
@ cc  
@ phono amp  
@ shad a wall

P:

(Paw)

(20)

CONSULTANT SIGNATURE:

*[Signature]*

DATE:

5/24/17

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY

\* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE  
INMATE'S NYSDOCS PHYSICIAN.PICKED  
5/25/17

# EXHIBIT D

2/26/19 8:07:20  
HSC4781NYS DEPARTMENT OF CORRECTIONAL SERVICES  
HEALTH SERVICES SYSTEM

PAGE 1

## REQUEST AND REPORT OF CONSULTATION

NAME: ROBERTSON, ERICK

DIN: 17A1841 DOB: 08/29/1966

REFERRING FAC : SULLIVAN

CURRENT FAC: SULLIVAN

REFERRAL DATE : 01/15/19 02:40P TELEMED: N&lt;N&gt;

REFERRAL NUMBER: 19022546.01M

TYPE OF SERVICE: AUDIOLOGY

REFERRAL TYPE : FOLLOW-UP

URGENCY OF CARE: ASSIGNED

REFERRAL STATUS: SCHEDULED

INTERPRETER:

MEDICAL HOLD: NO TYPE: REASON CODE:

EXP. DATE:

TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT: HEARING LOSS/HARD OF

REFERRED BY: SHARON O'CONNOR, NP

APPOINTMENT: 02/28/19 09:00A

REVIEWED BY: SHARON O'CONNOR, NP

POS: SULLIVAN CF

PROV: SERHAN, JOHN-AUD

## REASON FOR CONSULTATION:

USER: 01/15/19 02:40P C690SLO

( MONITOR AUDITORY THRESHOLDS AU - R/O PROGRESSIVE HEARING LOSS, REC. HEARING )

( TEST IN FEBRUARY )

( )

( )

( )

( )

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT: LIR M73B7E - with b. H. S. 7 13 case &amp; clem

S:

(HB) @ moderate - Profound HL  
@ mild - mls HL

O:

Light AR BA - Local 070 e 100  
Light HL

PTA @ 362 @ 40

A:

NO significant Auditory change per 2017 Audio

P:

(Paw)

POSTED  
3/1/19

02-28-19

CONSULTANT SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY \_\_\_\_/\_\_\_\_/\_\_\_\_

\* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE  
INMATE'S NYSDOCS PHYSICIAN.

# EXHIBIT E

EXHIBIT (E-1)

STATE OF NEW YORK  
COURT OF CLAIMS

---

ERICK ROBERTSON,

Claimant,

-against-

STATE OF NEW YORK,

Defendant.

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**AFFIDAVIT**

Claim No. 134886  
Motion No. M-95917  
Hon. Faviola A. Soto

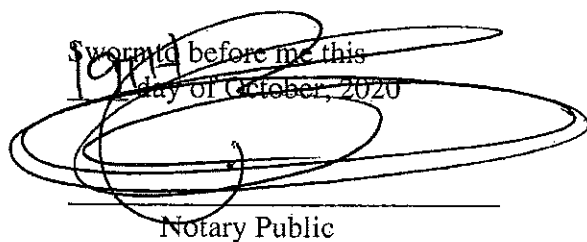
State of New York    )  
                                  ) ss:  
County of Sullivan    )

J. SIRCABLE, being duly sworn, deposes and says:

1. I am an Offender Rehabilitation Coordinator employed with the New York State Department of Corrections and Community Supervision ["DOCCS"] at the Sullivan Correctional Facility ["facility"]. I make this affidavit in opposition to the claimant's motion for summary judgment.
2. Part of my job duties is to assist inmates who apply for reasonable accommodations at the facility and remove accommodations when they are not medically necessary.
3. I reviewed the audiology report dated February 28, 2019, by Audiologist John Serhan, regarding Erick Robertson, Claimant. Audiologist John Serhan indicated a TTY or TDD device is not medically necessary for Claimant.
4. The report shows in the row "O: ... (-)TTY (-)TDD", which indicates negative for TTY and negative for TDD.
5. The report also indicated hearing loss in Claimant's left ear to be 40 dB measured by the Pure Tone Audiometry (PTA) and hearing loss in Claimant's right ear to be 62.
6. On March 1, 2019, Claimant's reasonable accommodation for use of the TTY was removed due to the audiology report indicating negative for TTY and negative for TDD.

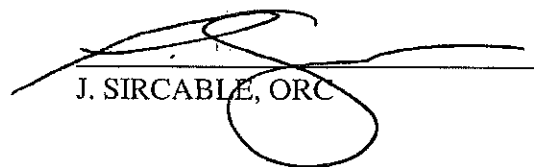
7. I assist in the applications for requests for reasonable accommodations. A form "2612 Attachment B" is filled out and sent to the Medical Department for Medical Verification. The form "2612 Attachment B", along with relevant medical documentation, are sent to the Deputy Superintendent for Programs or their designee for approval or denial.
8. On July 29, 2019, Claimant requested a reasonable accommodation for the use of a TTY/TDD.
9. On August 1, 2019, the Nurse Administrator verified the Claimant as Hard of Hearing, HL-20.
10. On August 6, 2019, the Supervising Offender Rehabilitation Coordinator (SORC) A. Escobar denied the request for reasonable accommodations.
11. On August 8, 2019, the Claimant was informed of the denial and refused to sign whether he agreed or disagreed with the determination and whether he wanted to meet with the Superintendent or his designee.
12. The Claimant sent a letter to Superintendent Keyser dated August 15, 2019, regarding the denial of the TTY reasonable accommodation.
13. On August 19, 2019, SORC A. Escobar responded.
14. On or about January 3, 2020, the Claimant's reasonable accommodation was reinstated.

Sworn to before me this  
19th day of October, 2020



Notary Public

RICHARD P. WISSLER  
Notary Public, State of New York  
No. 01W16397622  
Qualified in Orange County  
My Commission Expires on September 9, 2023



J. SIRCABLE, ORC

EXHIBIT (E-2)




## Corrections and Community Supervision

ANDREW M. CUOMO  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

To: Robertson, Erick 17A1841, DN-139

From: A. Escobar, SORC 

Date: August 19, 2019

Subject: Response to Denied Reasonable Accommodation TTY

This is in response to a letter you sent Superintendent Keyser dated 08/15/2019 regarding denial of the TTY reasonable accommodation. According to the 02/28/2019 Audiology Report written by Mr. J. Serhan, you do not qualify for TTY as a reasonable accommodation. If you have any further questions regarding your reasonable accommodations, please refer them to your assigned ORC.

CC: W. Keyser, Superintendent  
A. Justiniano, DSP  
E. Simmons, SORC  
J. Sircable, ORC

Exhibit (E-3)

NEW  
YORK  
STATECorrections and  
Community SupervisionANDREW M. CUOMO  
GovernorANTHONY J. ANNUCCI  
Acting Commissioner

TO: Superintendent Keyser  
FROM: DSP A. Justiniano  
SUBJECT: Robertson, Erick 17A1841  
DATE: July 11, 2019

Robertson previously utilized the TTY machine to make phone calls. He's currently listed as HL-20 (Hearing Impaired). Upon further review, the audiologist determined Robertson does not have a need for the TTY machine. Moreover, he utilizes the regular phone on the housing unit to contact family, and when making legal calls he declined the TTY machine and utilizes the phone amplifier.

cc: Guidance File  
Robertson, Erick 17A1841

001139

# EXHIBIT F



## Corrections and Community Supervision

ANDREW M. CUOMO  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

Disability Rights NY

JAN 08 2020

Received

January 3, 2020

Ms. Helen Charland  
Disability Rights New York  
725 Broadway, Suite 450  
Albany, New York 17A1841

Re: Erick Robertson (17A1841)  
TTY Accommodation

Dear Ms. Charland:

This acknowledges your December 11, 2019 correspondence requesting the above-captioned incarcerated individual reasonable accommodation be reinstated.

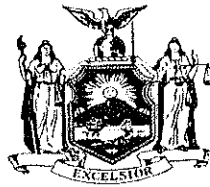
Please be advised Erick Robertson (17A1841) has been granted an accommodation for TTY services.

Regards  
A handwritten signature in black ink, appearing to read "Cathy Y. Sheehan".

Cathy Y. Sheehan  
Deputy Counsel

CYS:42

cc: Superintendent Sullivan Correctional Facility  
Na-Kia Walton, ADA Coordinator  
Central Files



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
BINGHAMTON REGIONAL OFFICE

February 6, 2024

Erick Robertson 17A1841  
Sullivan Correctional Facility  
PO Box 116  
Fallsburg, NY 12733-0116

Re: Robertson v. State of New York  
Claim No. 135173

Dear Mr. Robertson:

Enclosed for service upon you please find a copy of the Order with Notice of Entry in the above-captioned claim. Please note, said Order was filed in the Clerk's office of the Court of Claims on December 11, 2023.

Very truly yours,

MARK SWEENEY  
Assistant Attorney General

dew  
Enclosure

STATE OF NEW YORK  
COURT OF CLAIMS

---

ERICK ROBERTSON,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

---


NOTICE OF ENTRY OF  
ORDER

Claim No. 135173

PLEASE TAKE NOTICE that the annexed Order is hereby served upon you and it is a true and complete copy of a Order which was duly filed and entered in the Clerk's office of the Court of Claims, Albany, New York, on December 11, 2023, regarding the above-captioned claim.

DATED: Binghamton, New York  
February 6, 2024

LETITIA JAMES  
Attorney General

By:   
MARK SWEENEY  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
State Office Building, 17th Floor  
44 Hawley Street  
Binghamton, New York 13901-4433  
Telephone: (607) 251-2770

To: Erick Robertson 17A1841  
Sullivan Correctional Facility  
PO Box 116  
Fallsburg, NY 12733-0116

**FILED**

**STATE OF NEW YORK**

**COURT OF CLAIMS**

DEC 11 2023

**ERICK ROBERTSON,**

**STATE COURT OF CLAIMS  
ALBANY, N.Y.**

**Claimant,**

**ORDER  
DIRECTING  
JUDGMENT**

**-v-**

**Claim No. 135173**

**THE STATE OF NEW YORK,**

**Defendant.**

**BEFORE:**

**HON. JAVIER E. VARGAS  
Judge of the Court of Claims**

**APPEARANCES:**

**For Claimant:  
Erick Robertson, pro se**

**For Defendant:  
Hon. Letitia James, Attorney General  
of the State of New York  
By: Kevin Cheung, Esq., Assistant Attorney General**

By Verified Claim filed on August 6, 2020, Claimant Erick Robertson (hereinafter "claimant"), an incarcerated person in Sullivan Correctional Facility ("Sullivan"), commenced the instant action against Defendant State of New York (hereinafter "State"), seeking damages for the Department of Corrections and Community Supervision's (hereinafter "DOCCS") alleged deprivation of his use of a teletypewriter phone ("TTY") for two months in violation of the Americans with Disabilities Act ("ADA"). The State filed its Verified Answer on September 9, 2020, denying the allegations and asserting affirmative defenses.

Claim No. 135173

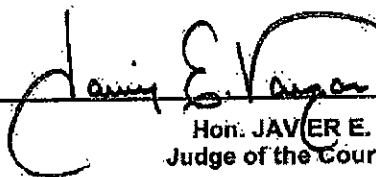
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The Claim was tried on consent jointly with Claim No. 134886, as they involved similar allegations, before the undersigned on September 25, 2023, via the Microsoft Teams application with the claimant appearing virtually from Sullivan, the Assistant Attorney General from Binghamton and the undersigned sitting in Manhattan. The claimant provided testimonial and documentary evidence, and was cross-examined by the State. After the claimant rested his case, the State made an oral motion to dismiss for failure to establish a prima facie case and the claimant opposed it.

The undersigned rendered a decision on the record in open court granting the State's trial motion to dismiss the Claim, finding that Claimant had failed to credibly establish by a fair preponderance of the evidence that the State was negligent or violated the ADA in any way.

Therefore, in accordance with the decision placed on the record in open court, it is ordered that judgment be entered dismissing Claim No. 135173.

New York, New York  
September 28, 2023

  
Hon. JAVIER E. VARGAS  
Judge of the Court of Claims

STATE OF NEW YORK  
COURT OF CLAIMS

ERICK ROBERTSON,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.


NOTICE OF ENTRY OF  
ORDER

Claim No. 134886

PLEASE TAKE NOTICE that the annexed Order is hereby served upon you and it is a true and complete copy of a Order which was duly filed and entered in the Clerk's office of the Court of Claims, Albany, New York, on December 11, 2023, regarding the above-captioned claim.

DATED: Binghamton, New York  
February 6, 2024

LETITIA JAMES  
Attorney General

By:   
MARK SWEENEY  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
State Office Building, 17th Floor  
44 Hawley Street  
Binghamton, New York 13901-4433  
Telephone: (607) 251-2770

To: Erick Robertson 17A1841  
Sullivan Correctional Facility  
PO Box 116  
Fallsburg, NY 12733-0116



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
BINGHAMTON REGIONAL OFFICE

February 6, 2024

Erick Robertson 17A1841  
Sullivan Correctional Facility  
PO Box 116  
Fallsburg, NY 12733-0116

Re: Robertson v. State of New York  
Claim No. 134886

Dear Mr. Robertson:

Enclosed for service upon you please find a copy of the Order with Notice of Entry in the above-captioned claim. Please note, said Order was filed in the Clerk's office of the Court of Claims on December 11, 2023.

Very truly yours,

MARK SWEENEY  
Assistant Attorney General

dew  
Enclosure

**FILED**

**STATE OF NEW YORK COURT OF CLAIMS**

DEC 11 2023

STATE COURT OF CLAIMS  
ALBANY, N.Y.

**ERICK ROBERTSON,<sup>1</sup>**

**Claimant,**

**ORDER  
DIRECTING  
JUDGMENT**

**-v-**

**Claim No. 134886**

**THE STATE OF NEW YORK,**

**Defendant.**

**BEFORE: HON. JAVIER E. VARGAS**  
Judge of the Court of Claims

**APPEARANCES: For Claimant:**  
Erick Robertson, pro se  
**For Defendant:**  
Hon. Letitia A. James, Attorney General  
of the State of New York  
By: Kevin Cheung, Esq., Assistant Attorney General

By Verified Claim filed on June 5, 2020, Claimant Erick Robertson (hereinafter "claimant"), an incarcerated person, commenced the instant proceedings against Defendant State of New York (hereinafter "State"), seeking damages for the Department of Corrections and Community Supervision's (hereinafter "DOCCS") alleged negligence and medical malpractice in failing to provide him with a teletypewriter phone ("TTY") for the hearing impaired from March 1, 2019 to January 7, 2020, despite his bilateral hearing loss, also in violation of the Americans with Disabilities Act ("ADA"). The State filed its Verified Answer on January 12, 2021, denying

<sup>1</sup> It should be noted that on this Claim's caption, the claimant spells his name without a "c," but he has always used "Erick" in all his other numerous motions and claims before the Court of Claims. This Court is hereby amending the caption to reflect the correct spelling used by DOCCS.

Claim No. 134886

Page 2

the allegations and asserting several affirmative defenses, particularizing failure to state a cause of action and contributory negligence.

Thereafter, on October 15, 2020, the claimant filed a motion against the State seeking summary judgment in his favor with respect to his Claim for negligence, medical malpractice and ADA violations. By Decision and Order dated December 24, 2020 (Soto, J.), the Court denied the claimant's motion on the grounds that he failed to prove his Claim with evidence in admissible form, instead relying on conclusory assertions that DOCCS committed medical malpractice, negligence and his rights were violated (*see Robertson v State of New York*, Ct Cl, January 6, 2021, Soto, J., Claim No. 134886, M-95917).

On June 30, 2022, following the retirement of the Hon. Faviola A. Soto, the Undersigned took over all matters currently pending at Sullivan Correctional Facility. This Court started working on this and other pending matters by the claimant. In a letter dated July 11, 2023, the Court notified the claimant that the instant docket was scheduled for trial on September 25, 2023, at Sullivan using video conferencing technology.

A virtual trial was held in this matter jointly with Claim No. 135173 before the undersigned on September 25, 2023. At the conclusion of trial after both parties rested, the State made an oral motion to dismiss the Claim. After hearing from both sides and deliberating, the Court granted the State's motion and dismissed the Claim on the record in open court based on the failure of the claimant to prove that the State engaged in any negligence, medical malpractice or ADA violation. The Court reasoned that when a Claim, as here, is "substantially related to medical diagnosis and treatment," it sounds in malpractice and the claimant must demonstrate that the State deviated from the accepted standard of care and that this departure was a proximate

Claim No. 134886

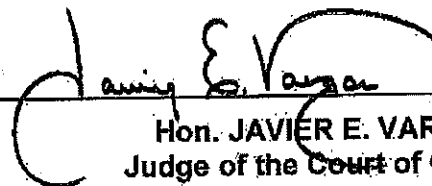
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cause of his injuries (*Sachs v State of New York*, 143 AD3d 1291 [4<sup>th</sup> Dept 2016]; *Carter v Tana*, 68 AD3d 1577, 1579 [3d Dept 2009]). In order to sustain this burden, the claimant must have presented expert testimony and medical evidence that the State's conduct constituted a deviation from the requisite standard of care (*see id.*), but he failed to do so. Nor did he sufficiently establish negligence or a violation of the ADA by the State.

Now, therefore, in accordance with the decision placed on the record, it is

ORDERED that judgment be entered dismissing the Claim.

New York, New York  
September 29, 2023



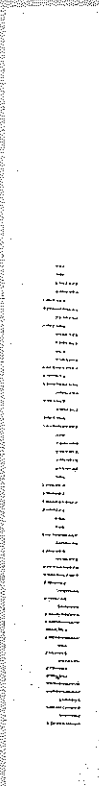
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Hon. JAVIER E. VARGAS  
Judge of the Court of Claims

Erick Robertson, 17-A-1841  
Sullivan Correctional Facility  
P.O. Box 116  
Fallsburg, N.Y. 12733-0115

PRO SE @

**LEGAL MAIL**  
Privileged & Confidential



United States District Court  
Southern District of New York  
500 Pearl Street  
New York, N.Y. 10007-1312



USMP3  
SDNY

quarant  
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